IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CRIMINAL REVISION PETITION NO. 200/2003

RAM BABU SHARMA & ANR. Vs. STATE OF RAJASTHAN

DATE: 08.02.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Manoj Sharma for the accused-petitioners.
Mr. Ashwani Kumar Sharma, P.P. for the State.

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This revision petition under Section 397 r/w Section 401 Cr.P.C. is directed against the order dated 01.02.2003 passed by the Additional Sessions Judge (Fast Track) No.2, Bundi in Sessions Case No. 110/2002, whereby the Court below has taken cognizance against the accused-petitioners for the offence under Section 306 IPC and refused to accept the final report.

In this revision petition the learned counsel for the accused-petitioners has raised a legal issue that under Section 193 Cr.P.C., cognizance could not be taken against the accused-petitioners by the Sessions Judge as the case was not committed to the Court of Session.

Learned Public Prosecutor appearing for the State has referred a judgment rendered by the Hon'ble Supreme Court in the case of **Dharam Pal & Others Vs.**

State of Haryana & another, reported in (2004) 13 SCC 9, wherein the Hon'ble Supreme Court considering Sections 193, 209 and 319 Cr.P.C. has held that cognizance of offences against persons not charge-sheeted, whose complicity in the crime comes to light from material available on record- Power of Sessions Court to take such cognizance at stage of committal of case to it- In view of disagreement with ruling in Ranjit Singh case, (1998)7 SCC 149, which has held that such power did not exist, matter referred to larger Bench.

It is given out on behalf of the parties that the matter is still pending before the Larger Bench of the Hon'ble Supreme Court for consideration.

Learned counsel for the accused-petitioners has also referred a judgment rendered by the Co-ordinate Bench of this Court in the case of **Girraj & Ors. Vs. State of Rajasthan, reported in 2000(2) RLR 568,** wherein this Court while considering Section 193 and 319 of Cr.P.C., has held that cognizance could not be taken by the Sessions Judge under Section 193 Cr.P.C. against accused-petitioners against whom no charge sheet was filed and whose case was not committed to court of Session.

Section 193 of the Code of Criminal Procedure reads as under:-

> **"193. Cognizance of offences by Courts of Session.-** Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

Having considered the rival submissions of the respective parties and after going through the aforementioned judgment rendered by the Hon'ble Supreme Court and considering the fact that the matter is still pending for consideration before the Larger Bench of the Hon'ble Supreme Court, I deem it proper to remand the matter back to the Court of Additional Sessions Judge (Fast Track) No.2, Bundi for fresh adjudication after giving thorough consideration to the judgments rendered by the Hon'ble Supreme Court and this Court in the cases aforementioned. The accused-petitioners are also given liberty to raise legal plea before the Court below.

In view of the aforesaid observations, the impugned order dated 01.02.2003 passed by the Additional Sessions Judge (Fast Track) No.2, Bundi is herewith quashed and set-aside and the matter is remanded back to the Court below for fresh adjudication as indicated herein above.

The revision petition stands disposed of.

(K.S. RATHORE), J.

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